

IN THE UNITED STATES BANKRUPTCY COURT FOR THE  
WESTERN DISTRICT OF MISSOURI

IN RE:	)	
	)	
LAWSON-ADAMS ENTERPRISES, INC.,	)	Case No. 03-61265
	)	
and	)	
	)	
ROBERT DEAN LAWSON,	)	Case No. 03-61323
	)	
Debtors.	)	

MEMORANDUM OPINION

Debtor Lawson-Adams Enterprises, Inc. (the Corporation) filed an objection to the claims of Marvis Lawson and Zoe Tucker. Both Marvis and Tucker filed responses. This is a core proceeding under 28 U.S.C. § 157(b)(2)(B) over which the Court has jurisdiction pursuant to 28 U.S.C. § 1334(b), 157(a), and 157(b)(1). The following constitutes my Findings of Fact and Conclusions of Law in accordance with Rule 52 of the Federal Rules of Civil Procedure as made applicable to this proceeding by Rule 7052 of the Federal Rules of Bankruptcy Procedure. For the reasons set forth below, I will sustain the Corporation's objection.

FACTUAL BACKGROUND

On May 29, 1966, Robert Lawson and Marvis Lawson were married, and on November 21, 2002, the Circuit Court of Dallas County, Missouri (the State Court) entered a Judgement of Dissolution of Marriage (the Decree). At the time of the Decree, which was contested, Robert was the sole shareholder of the Corporation, also known as the Family Inn Motel and Apartments. The Corporation, which is duly organized under the laws of the State

of Missouri, was formed in 1997, and the State Court found that it “constitutes the vast portion of the marital property and the only property that is income producing.”<sup>1</sup>The Corporation’s primary asset is a lease of, with an option to buy, the real estate, and buildings comprising the motel and apartments. The owner of the real estate is RAMAR Corporation (RAMAR). Neither the Corporation nor RAMAR was made a party to the dissolution proceeding. Nonetheless, the State Court awarded Robert the Corporation and executed a special lien in favor of Marvis in the amount of \$300,000.00. The State Court placed the special lien upon the real estate owned by RAMAR, as to which the Corporation holds a leasehold interest. The State Court also awarded Marvis a judgment against Robert in the amount of \$8,283.60 for her expenses. The Decree, however, does not mention a debt to Zoe Tucker.

On May 22, 2003, the Corporation filed a Chapter 11 bankruptcy petition. On May 29, 2003, Robert also filed a Chapter 11 bankruptcy petition. On October 28, 2003, this Court administratively consolidated the two cases, without objection. Both Marvis and Tucker did, however, object to confirmation of the Corporation’s proposed Plan of Reorganization (the Plan). In turn, the Corporation objected to the proofs of claim filed in the Corporation’s case by Marvis and Tucker. On January 8, 2004, this Court held a confirmation hearing and a hearing on the objections to the claims of Marvis and Tucker. At the hearing, counsel for the Corporation stated that he had an appraiser prepared to testify that the fair market value of

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<sup>1</sup>Ex. # 1, pg. 14 (Judgment of Dissolution of Marriage), admitted by consent of the parties.

the motel and apartments is \$760,000.00. The Corporation maintains that the payout on the lease is less than \$523,982.00. Thus, if the special lien in favor of Marvis is valid, and the appraisal is accurate, there would be equity available to satisfy a portion of the lien. If not, the equity would be available to pay the unsecured creditors of the Corporation. with any remaining funds going to Robert's bankruptcy estate. The lease expires on May 1, 2004, and the Plan proposes to either refinance or sell the Corporation on or before May 31, 2004, in order to satisfy the terms of the lease.

The basis of the Corporation's objections is that both Marvis and Tucker hold claims against Robert personally, but not against the Corporation. Counsel for Tucker agreed that her claim is an unsecured claim represented by a judgment against Robert personally. I, therefore, must sustain the Corporation's objection as to that claim.

The parties agree that the allowance or disallowance of Marvis' claim turns on whether the State Court had jurisdiction to order a special lien against the real estate when neither the Corporation nor RAMAR was a party to the dissolution proceeding. As such, it is a legal issue that can be decided on the pleadings. Counsel for the Corporation withdrew the Plan as proposed and stated he intended to submit an amended Plan following this Court's determination as to the validity of Marvis' lien.

### DISCUSSION

As a general rule, a "marital dissolution decree may not purport to affect property of a corporation that is not a party to the litigation, even if the corporate stock is primarily or

entirely owned by one of the parties to the dissolution action.”<sup>2</sup> At most, a court is limited to the disposition of stock owned by the parties, but not the corporate assets themselves.<sup>3</sup> In fact, any party interested in the subject matter of a litigation should be joined, if it is apparent that the party holds title to certain assets at issue in a dissolution proceeding.<sup>4</sup> Moreover, a court cannot enter judgment against one spouse in favor of certain joint creditors without joining the said creditors.<sup>5</sup> Courts may secure the performance of an act, or the future payment of money, by the imposition of a lien upon marital property distributed to a spouse,<sup>6</sup> provided the parties owned the property prior to the divorce. And, marital property distributed to a spouse or the separate property of a spouse is within the jurisdiction of the court.<sup>7</sup> In this case, however, the State Court granted Marvis a special lien on real estate owned by neither her, Robert, nor the Corporation. A lien or judgment entered against a corporation in litigation to which the corporation was not a party is void.<sup>8</sup>

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<sup>2</sup>*In re Marriage of Ward*, 659 S.W.2d 605, 607 (Mo. Ct. App. 1983) (citing *Penn v. Penn*, 655 S.W.2d 631, 633 (Mo. Ct. App. 1983); *In re Marriage of Schulz*, 583 S.W.2d 735, 742 (Mo. Ct. App. 1979); *V.M. v. L.M.*, 526 S.W.2d 947, 952 (Mo. Ct. App. 1975).

<sup>3</sup>*Penn v. Penn*, 655 S.W.2d at 633.

<sup>4</sup>*Alvino v. Alvino*, 659 S.W.2d 266, 269 (Mo. Ct. App. 1983).

<sup>5</sup>*Id.* at 272.

<sup>6</sup>*Costley v. Costley*, 717 S.W.2d 540, 544 (Mo. Ct. App 1986).

<sup>7</sup>*Id.*

<sup>8</sup>*Stinson v. Sharp*, 80 S.W.3d 852, 854 (Mo. Ct. App. 2002) (holding that a trial court has no authority to grant relief against a nonparty); *Grooms v. Grange Mutual Casualty Company*, 32 S.W.3d 618, 621 (Mo. Ct. App. 2000) (holding that if a court enters judgment when no valid personal jurisdiction has been obtained over the defendant, the judgment is void); *State ex rel*

There are some exceptions to this general rule. In *Secor v. Secor*,<sup>9</sup> the court found that a court of equity may disregard the corporate entity if the parties have agreed that properties held in the corporate name are marital assets and have requested the court to distribute such assets in a specific manner.<sup>10</sup> The State Court made no such finding in this case.

In *Mehra v. Mehra*,<sup>11</sup> the Missouri Supreme Court affirmed the trial court's order to the sole shareholder of a nonparty corporation to cause the corporation to transfer two insurance policies on his life to his former wife.<sup>12</sup> The court found that the trial court did not allocate the corporate assets themselves as marital property, but directed the husband, as the sole shareholder, to cause the corporation to transfer the two insurance policies on his life. Since the husband failed to demonstrate that he could not accomplish this order, the court concluded the trial court did not misapply the law.<sup>13</sup> That is not the case here. The State Court, in essence, granted Marvis a judgment lien against assets that Robert did not own.

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*American Family Mutual Ins. Co. v. Scott*, 988 S.W. 2d 45, 47 (Mo. Ct. App. 1998) (stating that Missouri courts have consistently held that no judgment can be granted against one who is not a party to the litigation); *Mehra v. Mehra*, 819 S.W.2d 351, 356 (Mo. 1991) (en banc) (holding that a marital dissolution decree may not purport to affect property of a corporation that is not a party to the litigation). See also *Schlueter v. Carey*, 112 S.W.3d 164, 172 (Tex. Ct. App. 2003) (holding that a judgment rendered against an individual or entity over which the trial court has not acquired personal jurisdiction is void).

<sup>9</sup>90 S.W.2d 500 (Mo. Ct. App. 1990).

<sup>10</sup>*Id.* at 502.

<sup>11</sup>819 S.W.2d 351 (Mo. 1991) (en banc.).

<sup>12</sup>*Id.* at 356.

<sup>13</sup>*Id.*

In *Schlingman v. Reed*,<sup>14</sup> the court held that a trial court, in its equitable powers, may disregard the separate legal entity of the corporation and individual where the separateness is a subterfuge to defraud creditors.<sup>15</sup> Two days after Reed's former wife served notice of her petition for damages, Reed instructed his attorney to transfer all of the stock in his closely-held corporation from him as an individual to him and his current wife. When the former wife served an order of garnishment on the corporation, Reed, on behalf of the corporation, responded that he had received no salary for the quarter, only dividends made payable to him and his wife as tenants by the entirety. The court found that Reed was the alter ego of the corporation and that the transfer of stock was void as a fraudulent conveyance.<sup>16</sup> In this case, the State Court also found that Robert was the alter ego of Lawson-Adams. It did not, however, make any findings of fraud to justify a piercing of the corporate veil. In Missouri a court must find some evidence of fraud in order to pierce the corporate veil and make the assets of the corporation available to the shareholder's creditors.<sup>17</sup> The State Court made no such findings as to either the Corporation or RAMAR.

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<sup>14</sup>750 S.W.2d 501 (Mo. Ct. App. 1988).

<sup>15</sup>*Id.* at 504.

<sup>16</sup>*Id.* at 503.

<sup>17</sup>*Ritter v. BJC Barnes Jewish Christian Health Systems*, 987 S.W.2d 377, 384 (Mo. Ct. App. 1999) (holding that the corporate veil may be pieced in Missouri when the corporate affiliation is conceived or used to perpetrate fraud or injustice or to accomplish some unlawful purpose); *K.C. Roofing Center v. On Top Roofing, Inc.*, 807 S.W.2d 545, 549 (Mo. Ct. App. 1991) (stating that a court may disregard the separate legal entity of the corporation if a sole shareholder controls the corporation and makes all of the decisions, and if the separateness is used as a subterfuge to defraud a creditor).

Under the *Rooker-Feldman* doctrine, this Court may not engage in appellate review of a state court determination.<sup>18</sup> *Rooker-Feldman* has its foundation, at least in part, in the United States Constitution's grant of exclusive appellate jurisdiction to the United States Supreme Court as to state court decisions.<sup>19</sup> However, *Rooker-Feldman* does not require federal courts to turn a blind eye to the validity of state court proceedings. Thus, in *Simes v. Huckabee*,<sup>20</sup> the Eighth Circuit held that a federal court had jurisdiction to consider a plaintiff's alleged violation of federal rights when such allegations had been raised, but not considered, in a prior state court proceeding. In so doing, the Eighth Circuit held that "not every federal claim which would cast doubt on a state court judgment is barred by *Rooker-Feldman*."<sup>21</sup> The doctrine has not been applied "where the federal plaintiffs lacked a reasonable opportunity, through intervention or otherwise, to litigate their claims in state court."<sup>22</sup> That is precisely so as to both the Corporation and RAMAR. It is for that reason that, under Missouri law, the "special lien" imposed on the real estate in which they both

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<sup>18</sup>*District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S. Ct. 1303, 75 L. Ed. 2d 206 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923); *Miller & Miller Auctioneers, Inc. v. Ritchie Brothers Auctioneers International (In re Missouri Properties, Ltd. and Billy W. Schell)*, 211 B.R. 914, 927 (Bankr. W.D. Mo. 1996) (holding that the *Rooker-Feldman* doctrine directs that "lower federal courts lack jurisdiction to engage in appellate review of a state court determination").

<sup>19</sup>*See U.S. Constitution, Art. III.*

<sup>20</sup>2004 WL 51253 (8<sup>th</sup> Cir. January 13, 2004).

<sup>21</sup>*Id.* at \* 3.

<sup>22</sup>*Id.* at \* 4 (citing *Lemons v. St. Louis County*, 222 F.3d 488, 492 (8<sup>th</sup> Cir. 2000); *Niere v. St. Louis County*, 305 F.3d 834, 836-37 (8<sup>th</sup> Cir. 2002)).

claim an interest is void, and cannot be recognized by this Court.<sup>23</sup>

The consequence of this decision is that, if the appraisal is accurate, there is substantial equity in the Corporation. The withdrawn Plan stated that the Corporation intends to either sell the leasehold or exercise its option to purchase by executing a loan. If so, Robert should use those funds to pay first the creditors of the Corporation, with the balance to go to the creditors in his own case, of whom Marvis represents the lion's share. The Court does not anticipate confirming a plan that allows Robert to pocket the funds and pay his creditors out of future earnings.

Rule 60(b)(4) of the Federal Rules of Civil Procedure, as made applicable to this proceeding by Rule 9024 of the Federal Rules of Bankruptcy Procedure, provides that “the court may relieve a party from a final judgment, order, or proceeding [i]f . . . (4) the judgment is void.”<sup>24</sup> Since the State Court did not have subject matter jurisdiction over either the Corporation or RAMAR at the time it granted the special lien, the lien is void under Missouri law. Since the lien against the Corporation is void, I will sustain the Corporation's objection to the proof of claim filed by Marvis.

In sum, the Court will separately order as follows:

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<sup>23</sup>*Compare In re Christian Brotherhood, Union Oaks, Inc.*, 301 B.R. 888, 891 (Bankr. D. Neb. 2003) (holding that Federal courts lack jurisdiction to engage in appellate review of a state court's distribution of corporate assets). In this case the wife had attempted to make the corporation a party to the dissolution, but had been blocked from doing so by her husband. The Nebraska State Supreme Court had, therefore, found that the husband had adequately represented the interests of the corporation in the dissolution proceeding.

<sup>24</sup>*In re Missouri Properties, Ltd.*, 211 B.R. at 924.



(1) the Corporation's objections to the proofs of claim filed by Marvis Lawson and Zoe Tucker are SUSTAINED;

(2) the "special lien" awarded to Marvis Lawson pursuant to the Judgment of Dissolution of Marriage, signed by the Circuit Court of Dallas County, Missouri on or about November 21, 2002, in Case No. CV301-040DR, is VOID.

An Order in accordance with this Memorandum Opinion will be entered this date.

/s/ Arthur B. Federman  
Chief Bankruptcy Judge

Date: